IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

W.P.NO. 638 OF 2004

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITION OF INDIA

PETITIONER : PRAKASH LAXMEY, S/O. SHRI HAR PRASAD LAXMEY, AGED ABOUT 27 YEARS R/O. RAJASVA COLONY, CHANTIDHI, BILASPUR, TAHSIL & DISTRICT BILASPUR (C.G.)

P.R. No. 636/04
Presented by Shri N.P. Kelay
dated 25.02.04

VERSUS

RESPONDENTS

01) INDIAN OIL CORPORATION LIMITED, ACTING THROUGH EXECUTIVE DIRECTOR (RETAIL) INDIAN OIL COMPANY BUILDING, ALI ZANG ROAD G-9 BANDRA (EAST) MUMBAI –51 (M.S.).

02) GENERAL MANAGER MADHYA PRADESH INDIAN OIL CORPORATION LIMITED, STATE OFFICE, 16 ARERA HILLS, JAIL ROAD, BHOPAL (M.P.).

03) DIVISIONAL MANAGER INDIAN OIL CORPORATION LIMITED, "INDIAN OIL BHAVAN" RAJIV GANDHI MARG (VIP ROAD) P.O. RAVIGRAM, TELIBANDHA, RAIPUR (C.G.).

04) SENIOR DIVISIONAL MANAGER (RETAIL SALES) INDIAN OIL CORPORATION LIMITED, "INDIAN OIL BHAVAN" RAJIV GANDHI

MARG (VIP ROAD) P.O. RAVIGRAM, TELIBANDHA, RAIPUR (C.G.).

:5) SHATRUGHAN LAL CHAUHAN, S/o. NOT KNOWN, AGED ABOUT 30 YEARS, R/o. VILLAGE KARMANDI, TAHSIL NAVAGARH, DISTRICT JANJGIR-CHAMPA (C.G.).

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT / WRITS, ORDER / ORDERS DIRECTION/DIRECTIONS ETC.

(93)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.638 of 2004

Prakash Laxmey

- Versus -

Indian Oil Corporation & four others

POST FOR ORDERS ON 8TH JULY, 2005

Sd/-
L.C.BHADOO
Judge

8.7.2005

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

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- Versus -

Indian Oil Corporation & four others

Present: -

Mr. K.A. Ansari, Senior Advocate
with Mr. R.L. Bajpai, Advocate: For the petitioner

Mr.Bhisma Kingar, Advocate: For respondent Nos.1 to 5.

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 08th July, 2005)

1. By this writ petition under Articles 226 & 227 of the Constitution of India the petitioner has challenged the selection of respondent No.5 made by respondents-Indian Oil Corporation for awarding of dealership of retail outlet of respondents-Corporation to be established at Mungeli Road, Bilaspur.

2. Brief facts, as set out in the petition, necessary for the disposal of this petition are that the respondents-Indian Oil Corporation, for establishing a retail outlet at Mungeli Road, Bilaspur decided to award the dealership to a suitable candidate and for that purpose published an advertisement in the daily newspaper dated 12.9.2000 inviting applications from the eligible candidates on the terms & conditions set out in the said advertisement. The residents of Shahdol, Korea, Korba, Janjgir-Champa, Raipur, Durg, Dindori, Kawardha, Sarguja and Bilaspur districts were entitled to apply for the said dealership and

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further condition was that only it was reserved for the members of scheduled caste. It was also made clear that a preference will be given to the candidate, who is the resident of same district where the retail outlet is to be established, if other things being equal. In response to the said advertisement the petitioner, respondent No.5 and some other candidates applied for the allotment of said dealership. The petitioner's case is that he is a law graduate and in response to the said advertisement he applied for said dealership. Initially, interview was fixed on 8.10.2003 but it was cancelled because of enforcement of Model Code of Conduct on account of Assembly Election for the year 2003. Thereafter, the interview was held on 12.1.2004 in the office of respondent No.3 and in the said interview respondent No.5 was selected. As per Para 5.9 of the petition respondent No.5 after the interview stated that he will be selected and after completion of interview when the list was published on 13.1.2004 the claim of respondent No.5 was proved true because he was selected and placed at Sr. No.1. The petitioner is the resident of Chantidih, Bilaspur, whereas respondent No.5 is resident of Village Karmandi, Tahsil Navagarh, District Janjgir-Champa, therefore, the petitioner was entitled for preference and priority. Therefore, it has been prayed that the selection of respondent No.5 be quashed.

3. Reply has been filed on behalf of respondent Nos. 1 to 4 and also on behalf of respondent No.5 in which it has been mentioned that the selection of respondent No.5 was based on the merit at the interview and this Court cannot exercise the judicial review for re-appreciation or reappraisal of these materials and factors or their relative weighing or evaluation of comparative merits of the competing candidates. Ultimately, it has been prayed that the petition of the petitioner deserves to be dismissed.

4. Respondent No.5 has denied the allegation that after interview he has made any claim that he will be selected

and has further mentioned in the return that being found meritorious at the interview he has been selected.

5. I have heard Mr. K.A. Ansari, learned Senior Counsel for the petitioner & Mr. B. Kingar, Counsel for respondent Nos.1 to 5.

6. Mr. Ansari, learned Sr. Counsel for the petitioner argued that the petitioner being the resident of Bilaspur ought to have been given preference, whereas respondent No.5, who is resident of Janjgir-Champa district was given preference and selected, therefore, selection was bad. He further argued that after interview respondent No.5 claimed that he will be selected and ultimately, he was selected, therefore, the selection of respondent No.5 is bad. He further argued that no reason has been assigned by the selection board that how they have awarded more numbers to respondent No.5 in comparison to the petitioner. He further argued that the selection board awarded more numbers in order to favour respondent No.5. Therefore, on this ground also the selection of respondent No.5 is liable to be quashed. Learned Sr. Counsel placing reliance on the decisions of the Hon'ble Apex Court in the matters of **Common Cause, A Registered Society Vs Union of India and others** reported in **(1996) 6 Supreme Court Cases 530** & **Shivsagar Tiwari Vs. Union of India and others** reported in **(1996) 6 Supreme Court Cases 558** as also the decision of Patna High Court in the matter of **Anil Kumar Singh Vs. Union of India and others** reported in **AIR 2001 Patna 56** argued that in view of above decisions the selection of respondent No.5 be quashed.

7. On the other hand, counsel for respondents vehemently opposed the argument advanced by learned Sr. Counsel for the petitioner and argued that the petitioner was entitled for preferential treatment only when the other things are equal, but when the other things were not equal the petitioner cannot claim preference on the basis of said condition. He further argued that selection

committee was consisting of experts in the field and they awarded the numbers after assessing the material and performance of the candidate at the interview. There is no allegation against the board members regarding bias, mala fide or favouritism, as such the petition is liable to be dismissed.

8. The law on the point regarding judicial review in the matter of award of dealership was considered by the High Court of Calcutta in the matter of **Chinmoy Sarkar and etc. Vs. Md. Shaniat Hossain and etc.** reported in **AIR 1990 Calcutta 412**. In that case also the similar point was regarding award of dealership of petroleum products and the Court held that "*High Court in Writ Jurisdiction cannot sit in appeal over the selection of a Dealer for a Retail outlet made by the Board. However, the exercise of such jurisdiction and the judicial reviewability of such selection are subject to the well-known limitations. If the selection is vitiated by an arbitrary or irrational exercise of power or by mala fides or is based on no materials or made on the basis of irrelevant materials or by ignoring relevant facts including eligibility, the Writ Court would and should, on proof of the relevant facts, grant an appropriate relief. However, it is not the Writ Court to delve deep into the records of the Board or the Corporation and to examine the validity of the rival claims upon appreciation afresh of the materials on such record and, on the basis of such reappraisal, to decide whether the selection was properly made and to give effect to such decision by the issue of a Writ.* The Hon'ble Apex Court in the matter of **K Vinod Kumar Vs. S. Palanisamy and others** reported in **(2003) 10 Supreme Court Cases 681** held that " *without raising specific plea impugning the manner of marking and mala fide exercise of discretion, the Court cannot interfere in the selection made by the selection committee.* In Para 7 of the judgment the Hon'ble Apex Court has observed, "*the dealer selection board must satisfy the requirements of a bona fide administrative decision arrived at in a fair manner. There are no mala*

fides alleged against the Dealer Selection Board or the President or any member thereof. There is no specific plea raised impugning the manner of marking. It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own assessment of the merits of the applicants. The marks given by the three were then totaled and arranged in the order of merit. In the absence of a particular procedure or formula having been prescribed for the Board to follow, no fault can be found with the manner in which the proceedings were conducted by the Board. The Board is entrusted with the task of finding out the best-suitable candidate and, so long as the power is exercised bona fide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the procedure adopted by the Board was arbitrary, unfair or unreasonable."

9. Therefore, the selection of candidate made by the selection committee based on their expertise, past experience and particularly involved in selection process cannot be challenged in a casual manner. In order to assail selection of respondent No.5, the petitioner is required to raise specific plea and established with material that exercise of selection was mala fide or selection was arbitrary and irrational exercise of power and same is based on no material or based on the basis of irrelevant factors or by ignoring the relevant factors including eligibility, unless the petitioner is able to proof and establish the above mala fides or irregularities in the selection the Writ Court cannot scrutinize and examine the selection in its own method exercising the power like appellate court. The numbers which have been awarded by the selection board are awarded after assessing the performance of the candidate at the interview, his intellect, caliber, conduct, manner of reply of question, his experience in the field of business and other relevant

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factors, therefore, the writ court cannot sit on such a decision as appellate court.

10. Based on the above principle, if we examine the facts of present case, as far as the ground of resident of same district is concerned, it was made clear in the advertisement itself that preferential treatment will be given to a candidate only when the other things are equal. In the present case, in interview respondent No.5 secured 109 marks, whereas the petitioner secured 105 marks, therefore, other things were not equal, as such the petitioner was not entitled for preferential treatment.

11. As far as the allegations made in Para 5.9 of the petition that just after the interview respondent No.5 made a claim that he will be selected is concerned, merely on the ground it cannot be held that the selection of respondent No.5 was not on merit. As has been held by the Hon'ble Apex Court in the matter of K. Vinod Kumar (Supra) in the first instance, the petitioner is required to made a specific plea in the petition and thereafter, he has to prove and establish the same with material. The petitioner has levelled bald allegation without any material and he had not been able to establish the same. Even otherwise, after interview, if any candidate made a claim that he will be selected that cannot be considered that his selection is malafide or he has claimed that he will be selected by any manipulation or influence. In fact, candidate may make such a claim on the basis of his performance at the interview also. Unless such a claim is based on irrelevant consideration or mal-practices, it cannot be held to be a bad. Therefore, I do not find any substance in this ground also.

12. As far as the argument of learned Sr. Counsel for the petitioner that no reason has been assigned for awarding more marks to respondent No.5 in comparison to the petitioner is concerned, same is also without any merit. There is no allegation in the petition that the selection board has not followed the procedure or guidelines, which

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they were required to follow or the selection board has exercised their power in an arbitrary & malafide manner. The selection board has fixed the norms & guidelines for awarding the numbers at the interview and as per that various factors like personality, business caliber & acumen, salesmanship, capability to arrange finance, educational qualifications, general intellect and general level of intelligence etc. were to be taken into consideration, under each head separate numbers were fixed and after assessing the material on record and also the performance of candidate at the interview three members committed including Chairman & two members awarded numbers under each head based on their assessment at the interview. As such power the argument advanced by learned Sr. Counsel for the petitioner that the board has exercised its power in a malafide manner is without merit. The petitioner has not raised any specific plea in the petition that how the manner of assessment & award of number to the candidate at the interview was defective, biased, or contrary to the settle procedure.

13. Now coming to the judgments cited by learned counsel for the petitioner. In the matter of Common Cause (supra) the Hon'ble Apex Court cancelled the award of dealership based on the discretionary quota of the Minister on the ground that the dealership was awarded exercising the discretionary power to favour the persons related to the politicians, members of oil selection board, officials in the ministry in a cloistered and stereotyped manner without any guidelines or criteria. Therefore, the court held that the said exercise of discretionary power was arbitrary, discriminatory and mala fide and quashed the selection. Similarly, in the matter Shivsagar Tiwari (*supra*) the Hon'ble Apex Court reached to the conclusion that the Minister of Urban Development allotted the shops and stalls to his own employees and domestic servants without following any policy or criteria, therefore, the Court held that the allotments were arbitrary, amounts to misuse of power and that is why the ordered for

cancellation. Whereas, in the present case no such allegation is there. In the matter of Anil Kumar Singh (supra) the Patna High Court reached to conclusion that the respondent was not found to be resident of Village where the dealership was to be granted as per the conditions, therefore, held that the selection was made in violative of the condition in advertisement and that is why the Court quashed the selection. In the present case there are no such allegations, therefore, all the above three judgments are of no help to the petitioner.

14. In the result, I am of the opinion that the writ petition has no merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

08.07.2005

Roshan/-